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WRITER'S DIRECT DIAL

June 30, 2005

VIA OVERNIGHT MAIL AND ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

c/o Mellon Client Service Center
500 Ross Street, Room 670
Pittsburgh, Pennsylvania 15262-0001

Attention: Lockbox Number 358165

**Re: WTEN-DT, Albany, New York
MB Docket No. 03-15
Supplement to Maximization/Replication Waiver Request
and Request for Extension of Special Temporary Authority**

Dear Ms. Dortch:

On behalf of Young Broadcasting of Albany, Inc. ("Young"), permittee of Digital Television Station WTEN-DT, Albany, New York, this letter shall serve as a supplement to Young's "use-it-or-lose-it" maximization/replication waiver request (filed by letter dated May 10, 2005) for the purpose of

Ms. Marlene H. Dortch
June 30, 2005
Page 2

responding to the Commission's June 15, 2005, Public Notice, DA 05-1636. This letter shall also serve as a request by Young for an extension of special temporary authority ("STA") to operate WTEN-DT at reduced power and from a different site than that authorized in Young's construction permit during the pendency of Young's maximization/replication waiver request and construction permit ("CP") modification application (FCC File No. BMPCDT-20041028AEB).

The Commission last extended Young's STA on February 28, 2005, for a term expiring July 1, 2005 (BEDSTA-20050218ACL). The STA expiration is concomitant with the use-it-or-lose-it maximization/replication deadline of which Young has previously requested waiver.

A copy of Young's May 10, 2005, maximization/replication waiver request is enclosed. As indicated in the waiver request filed May 10, 2005, Young will be unable to meet the July 1, 2005, maximization/replication deadline because of circumstances beyond its control—specifically, international coordination of the full-power WTEN-DT transmission facility for the desired site has still not occurred, because Canada has not yet given its concurrence, which has delayed the grant of a CP to build at Young's desired site. As noted in the engineering statement that has accompanied Young's previous STA requests for WTEN-DT, and as demonstrated by the enclosed contour map, Young's current DTV STA operation already exceeds the replicated allotment. As set forth in Young's Form 381 filing, however, Young's selection of replication facilities in Question 1 of Section II of Form 381 was made upon the advice of Commission staff because Form 381 did not permit Young to certify its intent with respect to a pending application. However, notwithstanding its certification in Question 1 of Section II of Form 381, it is Young's intention to operate WTEN-DT post transition pursuant to the parameters of the pending CP modification application, subject to Commission approval, and not to operate WTEN-DT pursuant to the replication of the allotted facility.

With respect to circumstances such as that of WTEN-DT, the Commission's June 15, 2005, Public Notice does not appear to seek any further information than that already provided in Young's May 10, 2005, waiver request. To the extent necessary, for the reasons set forth in Young's May 10, 2005, waiver request, Young seeks a waiver of the August 16, 2005, replication/maximization deadline established by its existing CP, which is scheduled to expire on August 16, 2005.

During the pendency of Young's maximization/replication waiver request, Young requests extension of its DTV STA. This STA request proposes operation consistent with that specified in Young's CP and pending modification application (FCC File No. BPCDT-19991027ABZ and BMPCDT-20041028AEB), except that the instant request contemplates that the station's ERP would continue to be reduced to 375 kW. These are the same operating parameters for which STA was granted on August 25, 2004 (FCC File No. BDSTA-20040227ACA) and extended on February 28, 2005 (FCC File No. BEDSTA-20050218ACL).

Enclosed are an FCC Form 159 completed with credit card authorization to cover the requisite STA filing fee and an Anti-Drug Abuse Act Certification.

Ms. Marlene H. Dortch
June 30, 2005
Page 3

If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

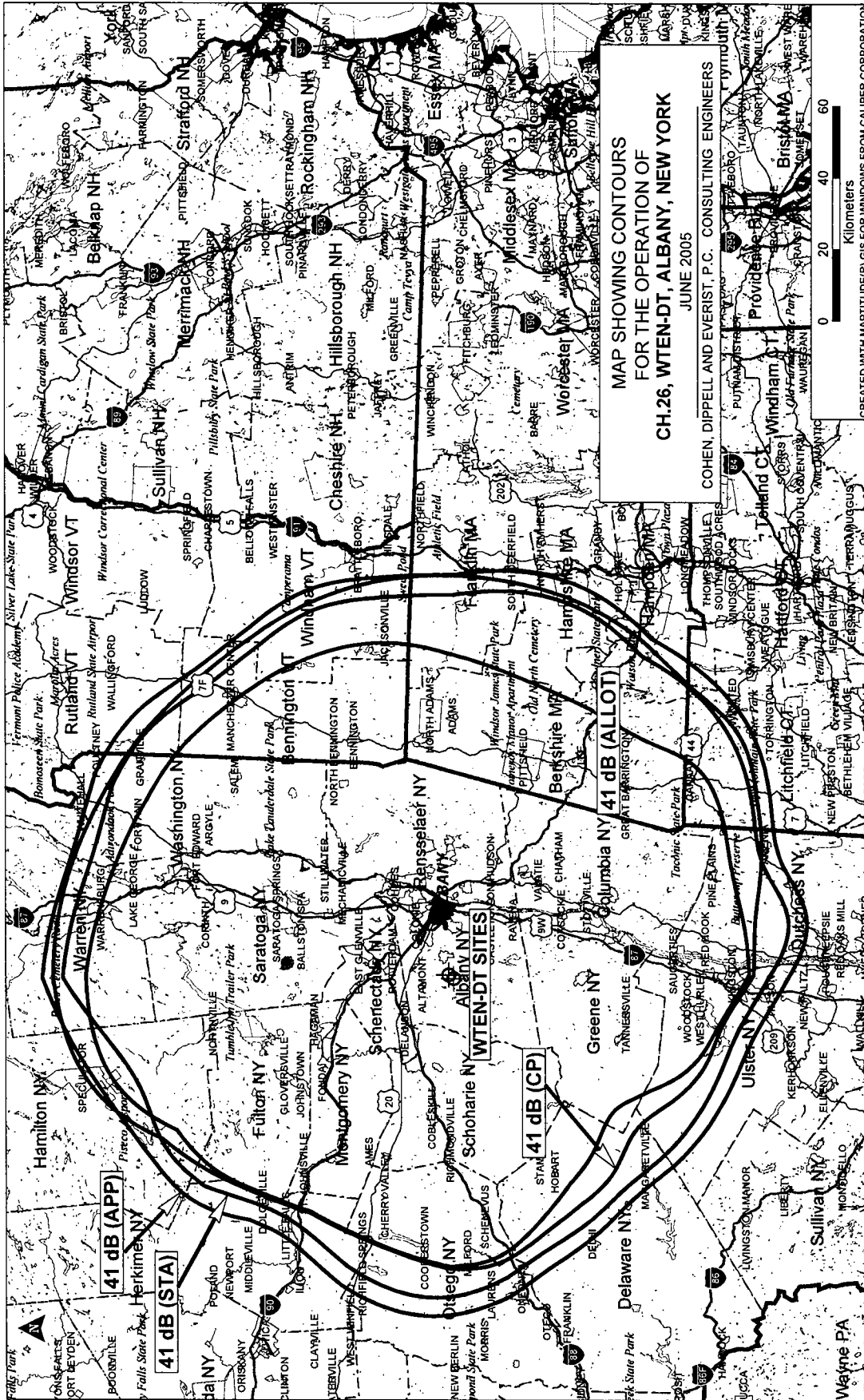
Sincerely,


BROOKS PIERCE McLENDON,
HUMPHREY & LEONARD, L.L.P.

Mark J. Prak
Coe W. Ramsey
Counsel to Young Broadcasting of Albany, Inc.

Enclosures

cc: Nazifa Sawez, FCC (via email)
Shaun Maher, FCC (via email and hand delivery)
Vernese O'Bryant, FCC (via email)
Nai Tam, FCC (via email)



MAP SHOWING CONTOURS
FOR THE OPERATION OF
CH.26, WTEN-DT, ALBANY, NEW YORK

JUNE 2005

COHEN, DIPPELL AND EVERIST, P.C. CONSULTING ENGINEERS

CREATED WITH MAPTILER (N) GIS FOR WINDOWS FROM CALIPER CORPORATION

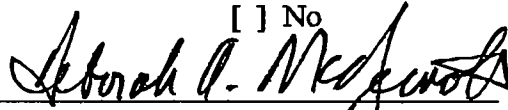
ANTI-DRUG ABUSE ACT CERTIFICATION

By checking "Yes", the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits pursuant to that section. For the definition of a "party" for these purposes, refer to 47 C.F.R. §1.2002(b).

☒ Yes

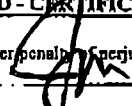
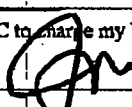
Young Broadcasting of Albany, Inc.
Licensee of WTEN

Date: June 10, 2005

☐ No

Name: Deborah McDermott

Title: President

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING (1) LOCKBOX # 358165	FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE	Approved by OMB 3060-0589 Page No <u>1</u> of <u>1</u>
		SPECIAL USE FCC USE ONLY
SECTION A - PAYER INFORMATION		
(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) Young Broadcasting, Inc.		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$150.00
(4) STREET ADDRESS LINE NO. 1 589 Lexington Avenue		
(5) STREET ADDRESS LINE NO. 2 47th Floor		
(6) CITY New York		(7) STATE NY
		(8) ZIP CODE 10022
(9) DAYTIME TELEPHONE NUMBER (include area code) (212) 754-7070		(10) COUNTRY CODE (if not in U.S.A.)
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(11) PAYER (FRN) 0007459514		(12) PAYER (TIN) 134187415
IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)		
(13) APPLICANT NAME Young Broadcasting of Albany, Inc.		
(14) STREET ADDRESS LINE NO. 1 c/o Brooks, Pierce, et. al.		
(15) STREET ADDRESS LINE NO. 2 P.O. Box 1800		
(16) CITY Raleigh		(17) STATE NC
		(18) ZIP CODE 27602
(19) DAYTIME TELEPHONE NUMBER (include area code)		(20) COUNTRY CODE (if not in U.S.A.)
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(21) APPLICANT (FRN) 0003453644		(22) APPLICANT (TIN) 0141718758
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) CALL SIGN/OTHER ID WTEN-DT		(24A) PAYMENT TYPE CODE MGT
		(25A) QUANTITY 1
(26A) FEE DUE FOR (PTC) \$150.00	(27A) TOTAL FEE \$150.00	FCC USE ONLY
(28A) FCC CODE 1		(29A) FCC CODE 2
SECTION C - CONTINUATION SHEET		
(23B) CALL SIGN/OTHER ID		(24B) PAYMENT TYPE CODE
		(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1		(29B) FCC CODE 2
SECTION D - CERTIFICATION		
(30) CERTIFICATION STATEMENT I, James Morgan , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE  DATE 6/13/05		
SECTION E - CREDIT CARD PAYMENT INFORMATION		
(31) <input type="checkbox"/> MASTERCARD	MASTERCARD/VISA ACCOUNT NUMBER: <div style="border: 1px solid black; width: 200px; height: 20px;"></div>	<input checked="" type="checkbox"/> American Express Account Number: 378298719922134
		EXPIRATION DATE: 8/06
<input type="checkbox"/> VISA		
I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described. SIGNATURE  DATE 6/13/05		

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mprak@brookspierce.com

May 10, 2005

RECEIVED

MAY 10 2005

Federal Communications Commission
Office of Secretary

EXPEDITED PROCESSING REQUESTED

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: **WTEN-DT, Albany, New York**
Request for Maximization/Replication Waiver

Dear Ms. Dortch:

Young Broadcasting of Albany, Inc. ("Young") is permittee of WTEN-DT.

This letter shall serve as Young's request for waiver of the Commission's use-it-or-lose-it maximization/replication deadline of July 1, 2005. *See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 04-192 (Rel. Sept. 7, 2004) ("DTV R&O"), at ¶¶ 83, 87. As certified in its Form 381 filing (FCC File No. BCERCT-20041105AFJ), Young intends to replicate consistent with the parameters in its pending construction permit ("CP") application (FCC File No. BMPCDT-20041028AEB) but will be unable to do so in time to meet the July 1, 2005, maximization/replication deadline because of circumstances beyond its control—specifically, international coordination of the full-power WTEN-DT transmission facility for the desired site has still not occurred, because Canada has not yet given

its concurrence, which has delayed the grant of a CP to build at Young's desired site.

In order to fully understand the instant waiver request, it is necessary to understand the lengthy history of Young's efforts to construct its new digital station WTEN-DT. Accordingly, in support of this waiver request, Young shows the following:

In 1999, Young filed its initial application for its digital CP (FCC File No. BPCDT-19991027ABZ). The CP application specified a particular site ("Site 1") with a non-directional ERP of 950 kW at 310 meters HAAT (the digital allotment was for 1000 kW at 305 meters HAAT). In July 2001, through previous legal counsel, Young advised the Commission in writing that it was working with other stations in the market to establish a new, joint tower site, and, in February 2002, Young filed a minor amendment to BPCDT-19991027ABZ specifying the new site ("Site 2") and proposing operation at a non-directional ERP of 746 kW at 426 meters HAAT. The February 2002 application requested coordination with Canada, and the application appeared to get "hung up" in the Canadian coordination process.

In late Fall of 2003, Young's consulting engineer learned from informal discussions with Commission staff that Canadian concurrence for the proposed operation at Site 1 had been previously obtained. At no time prior to the late Fall of 2003 had Young been made aware that Canadian coordination had been resolved. Young's consulting engineer again consulted with the Commission staff and learned that further delay from Canadian coordination could be avoided by amending Young's proposed operation at Site 2 to fall within the relevant limits and parameters of the Canadian-approved operation at Site 1. Accordingly, in February 2004, Young amended its CP application to specify a directional ERP of 700 kW at 426 meters HAAT.¹ The Commission forwarded this proposal for Canadian coordination in April 2004. Also in February 2004, in an effort to get its digital facility on the air, Young filed a request for Special Temporary Authority ("STA") to operate from Site 2 with an ERP of 375 kW at 426 meters HAAT (FCC File No. BDSTA-20040227ACA). In fact, in recognition of the importance to Young of commencing digital operation pursuant to STA, Commission staff entered the STA request into CDBS on February 27, 2004, based on the courtesy copy emailed by Young's counsel, before the hard copy had been received by the Secretary's office.

The STA request was pending for a number of months, and, in the summer of 2004, Young's consulting engineer again consulted with Commission staff seeking resolution of the STA so that Young could commence digital broadcasting on WTEN-DT from Site 2. Commission staff advised that the STA would be granted only if the pending CP application was amended back to specify the Site 1 operating parameters for which Canadian clearance had been obtained. Accordingly, on July

¹ See Page 6 of the February 2004 engineering report in FCC File No. BPCDT-19991027ABZ which reflects that impact to Canadian stations would be less than previously coordinated.

27, 2004, Young filed an amendment to its pending CP application with the understanding—based on communication between Young’s consulting engineer and Commission staff—that the amendment was necessary in order for Young to obtain a grant of its STA request, which had been pending for several months. The July 27, 2004, amendment, filed for the sole purpose of obtaining grant of the STA, re-proposed the original facility at Site 1. A few days later, the Commission issued a freeze on certain television applications, *see August 2004 Filing Freeze PN*, DA 04-2446 (MB Rel. Aug. 3, 2004) (“Freeze PN”), and counsel advised Commission staff by email that Young wished to withdraw the July 27, 2004, amendment but was concerned about the impact of the freeze on its ability to withdraw the amendment. On August 25, 2004, Young’s STA to operate WTEN-DT at Site 2 was granted, and Young’s July 27, 2004, amendment remained pending. Young’s STA to operate WTEN-DT at Site 2 has since been extended (FCC File No. BEDSTA-20050218ACL) and is set to expire on the July 1, 2005, maximization/replication deadline.

In October 2004, following the institution of the Freeze and the subsequent grant of the Site 1 CP amendment application, Young re-filed for Site 2 (FCC File No. BMPCDT-20041028AEB). Young’s counsel and consulting engineer have contacted Commission staff in the Media Bureau and in the International Bureau concerning the continued pendency of the Site 2 application and the concomitant international coordination issues. Most recently, Young’s consulting engineer has coordinated a meeting between Media Bureau and International Bureau staff in an attempt to bring the matter to a resolution in advance of the July 1, 2005, replication/maximization deadline.

In the *DTV R&O*, the Commission stated that it “will establish a limited waiver process and grant extensions of the applicable replication or maximization interference protection deadline on a six-month basis if good cause is shown.” *DTV R&O*, at ¶ 87. Stations “that cannot build out for reasons beyond their control” may seek a waiver. *DTV R&O*, at ¶ 83. The instant case clearly presents a circumstance beyond Young’s control, as an international coordination issue is precisely the sole reason that Young in July 2004 amended back to Site 1, was subsequently frozen out pursuant to the Freeze PN, and has been unable—for several years—to secure a CP for Site 2. The following factors all counsel in favor of grant of the instant request: (1) Young’s CP was pending for almost five years; (2) the Commission has been aware since at least July 2001 that Young and other television stations in the market were seeking and have found a co-location solution at Site 2; (3) Young’s various amendments to its CP were done in an effort to resolve Canadian coordination issues and at the advice of Commission staff; (4) the July 2004, CP amendment was filed solely in an effort to obtain authority for WTEN-DT to begin broadcasting in digital under STA authority—and done at the advice of Commission staff; and (5) Young has largely built out its facility at Site 2 and, upon the grant of the Site 2 CP, will expeditiously order its new transmitter to commence operation at full power (it is estimated that procurement and installation of the final transmitter will take approximately 90 days; the capital expenditures for the final transmitter have already been budgeted, but Young has held off ordering it until grant of the Site 2 CP to avoid the potential risk of further stranded investment).

Moreover, grant of the instant waiver request and pending CP application would not undermine the digital transition, because most of the market's stations are already aware of WTEN-DT's proposed parameters since they are planning to operate from the co-located Site 2. Significantly, grant of the instant waiver request would not undermine the rationale behind the use-it-or-lose-it policy. "The 'use-it-or-lose-it' deadline simply means that after a reasonable build-out period has passed, if a station fails to provide a signal to serve certain viewers, another entity should have the opportunity to do so. After a reasonable build-out period, we believe that the objectives of providing service to the public and spectrum efficiency militate against further protection of the unserved areas." *DTV R&O*, at ¶ 82. The reason Young will be unable to meet the July 1, 2005, deadline is the failure of Canada to timely give concurrence to Young's proposed operation at Site 2 *which is fully within the limits already concurred to by Canada*. Young is in no way to blame for this situation, and would be unfairly penalized by a rote application of the use-it-or-lose-it policy to WTEN-DT. Young's willingness to amend and re-amend its CP application at the direction of Commission staff in order to be able to commence digital operations is strong evidence that Young has been willing to do everything necessary to further its transition to digital operation. In fact, Young has also been operating WCDC-DT, the full-power satellite of WTEN, and plans to continue those operations throughout the digital transition—i.e., not "flash-cut" WCDC-DT. Young's approach for WCDC is further evidence that Young is not a "laggard" in the digital transition such that it deserves to "lose it" if it does not "use it" at Site 1 or at Site 2. Additionally, unwavering enforcement of the use-it-or-lose-it maximization/replication deadline against Young from Site 1 would cause the prototypical example of "stranded investment"—the Commission, with knowledge of Young's plans to permanently operate from Site 2, has already granted Young authority to operate from Site 2 with an STA and requiring Young to fully build out its digital facility at Site 1—i.e., to "use it or lose it" from Site 1—would be inequitable and contrary to reason. Furthermore, as noted in the Engineering Statement to the October 2004, CP amendment, no objectionable interference to any other facilities is predicted from the Site 2 operation.

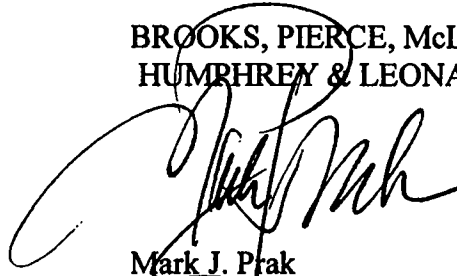
For the foregoing reasons, Young believes that a waiver of the Commission's use-it-or-lose-it maximization/replication deadline is warranted in this case and is necessary or otherwise in the public interest.

Marlene H. Dortch
May 10, 2005
Page 5

If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in black ink, appearing to read 'Mark J. Prak', is written over the firm name.

Mark J. Prak
Coe W. Ramsey
Counsel to Young Broadcasting of Albany, Inc.

cc: Rick Chessen, FCC (via email)
Nazifa Sawez, FCC (via hand delivery)
Clay Pendarvis, FCC (via email)